

L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

May 23, 1980

You ask whether personnel hired by ("Company"), a nursing personnel agency, are employees or independent contractors of the Company.

The Company is a national nursing service which provides skilled and semi-skilled nursing personnel, on temporary assignment, to health care facilities. The Company assigns work, supervises, and pays the salaries of its personnel. The Company also pays unemployment and workmen's compensation premiums, and provides insurance and other benefits.

Section 1 of Chapter 62B of the Massachusetts General Laws adopts the definition of "employee" in Section 3401(c) of the Internal Revenue Code.

Treasury Regulation 31.3401(c)-1(b), which interprets Section 3401, sets forth general rules for distinguishing between an employee and an independent contractor. Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services both as to the result to be accomplished by the work and as to the details and means by which that result

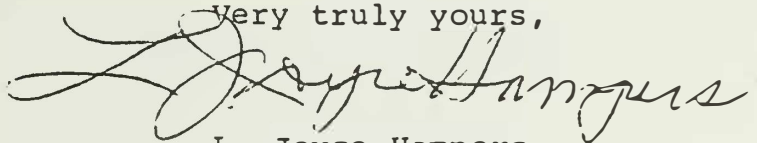
is accomplished. The employer does not have to actually direct the manner in which the services are performed so long as he has a right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer.

Revenue Ruling 75-101 involved a company in the business of furnishing the services of practical nurses. The company issued instructions to the nurses, paid their salaries, and had the right to terminate their oral employment contracts. The Internal Revenue Service ruled that the practical nurses were employees for purposes of FICA, FUTA and income tax withholding.

Section 2 of Chapter 62B of the Massachusetts General Laws states that "every employer making payment to employees...of wages subject to tax...shall deduct and withhold a tax upon such wages."

Based on the foregoing it is ruled that personnel hired, given work assignments, supervised and paid by a nursing service company which provides skilled and semi-skilled workers, on a temporary basis, to health care facilities, are employees of the company. The compensation paid by the company to its employees is subject to Massachusetts income tax withholding.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. Joyce Hampers".

L. Joyce Hampers,
Commissioner of Revenue

LJH/RSF/jmcd